

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

DEVIN A. WHITTIER, Individually,

No.

Plaintiff.

VS.

SEATTLE TUNNEL PARTNERS, a joint venture; HARRIS REBAR SEATTLE, INC., a Delaware corporation;

**DEFENDANT SEATTLE TUNNEL
PARTNERS'S NOTICE OF REMOVAL
OF ACTION**

JURY DEMAND

Defendants.

**TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE:**

PLEASE TAKE NOTICE that Defendant Seattle Tunnel Partners (“STP”), a joint venture (“Defendant”) hereby removes to this Court the State action described below in accordance with 28 U.S.C. §§ 1332, 1441, and 1466.

I. STATE COURT ACTION

1. The State Court action to be removed is *Devin A. Whittier v. Seattle Tunnel Partners and Harris Rebar Seattle, Inc.*, Washington State Superior Court for King County Case No. 17-2-04219-6 SEA, to the United States District Court for the Western District of

1 Washington, Seattle Division, on the grounds set forth herein. (Plaintiff's First Amended
2 Complaint for Personal Injuries and Damages – Exhibit 1.)

3 **II. TIME FOR REMOVAL**

4 2. Plaintiff filed its action in King County Superior Court on February 22, 2017.
5 Plaintiff served Defendant through its registered agent CT Corporation System in the State of
6 Washington, on April 14, 2017. Defendant therefore has until May 15, 2017 to move for removal
7 to this Federal District Court. 28 U.S.C. § 1446(b).¹ (Declaration of Service of Tutor Perini
8 Corporation – Exhibit 2.) (Declaration of Service of Dragados USA, Inc. – Exhibit 3.)

9 **III. BASIS FOR REMOVAL**

10 3. A party may seek removal of a State Court action where the amount in controversy
11 exceeds \$75,000 and the action is between citizens of different states. 28 U.S.C. § 1332(a)(1).

12 **A. Amount in Controversy**

13 4. Where it is not factually evident from the complaint that the amount in controversy
14 exceeds \$75,000, the moving party is to show, by a preponderance of the evidence, that the
15 amount in controversy meets the jurisdictional requirement. *Matheson v. Progressive Specialty*
16 *Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003). Moreover, “[t]he notice of removal shall...set forth
17 the reasons which cause petitioner to have a good faith belief that the plaintiff is seeking damages
18 in excess of the jurisdictional amount of this court...” LCR 101(a).

19 5. The preponderance of the evidence standard was recently re-affirmed in the Federal
20 Courts Jurisdiction and Venue Clarification Act of 2011, Pub. L. No. 112-63, 125 Stat. 758.
21 According to the House Report accompanying the bill, “circuits have adopted differing standards
22 governing the burden of showing that the amount in controversy is satisfied. The ‘sum claimed’
23 and ‘legal certainty’ standards that govern the amount in controversy requirement when a plaintiff
24 originally files in Federal court have not translated well to removal, where the plaintiff often may
25 not have been permitted to assert in state court a sum claimed or, if asserted, may not be bound by

26 ¹ Thirty days from the date of service of April 14, 2017 is technically Sunday, May 14, 2017. Pursuant to LCR 6(a)
27 and Fed. R. Civ. P. 6(a)(1)(c), because the last day of the period falls on a Sunday, the period continues to run until the
end of the next day that is not a Saturday, Sunday, or legal holiday.

1 it.” H.R. Rep. No. 112-10, at 15 (2011). Accordingly, “the defendants do not need to prove to a
 2 legal certainty that the amount in controversy requirement has been met. Rather, defendants may
 3 simply allege or assert that the jurisdictional threshold has been met.” *Id.* at 16.

4 6. It is “facially apparent” from the nature of the claims alleged, and more likely than
 5 not from the types of damages sought, that the amount in controversy exceeds \$75,000, exclusive
 6 of interests and costs. *See Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir.
 7 1997); *Del Real v. HealthSouth Corp.*, 171 F. Supp. 2d 1041, 1043 (D. Ariz. 2001) (where state
 8 court complaint does not specify amount in controversy, removing defendant need only provide
 9 evidence establishing that it is more likely than not that the amount in controversy exceeds the
 10 federal jurisdictional requirements; to determine subject matter jurisdiction, the court may
 11 entertain extrinsic evidence, weigh evidence, and if necessary resolve factual disputes); *see also In*
 12 *re Rezulin Prods. Liab. Litig.*, 133 F. Supp. 2d 272, 296 (S.D.N.Y. 2001) (concluding that
 13 complaint “obviously asserts a claim exceeding \$75,000” where plaintiff seeks damages for
 14 alleged “serious and life-threatening medical conditions” due to use of prescription medicine);
 15 *Gebbia v. Wal-Mart Stores, Inc.*, 233 F.3d 880, 883 (5th Cir. 2000) (holding it facially apparent
 16 that the amount in controversy was met in slip-and-fall case by allegations of injuries to wrist,
 17 knee, patella, and back, and alleged damages for medical expenses, physical pain and suffering,
 18 mental anguish and suffering, loss of enjoyment of life, loss of wages and earning capacity, and
 19 permanent disability and disfigurement).

20 7. Similar damage allegations personal injury cases have been held to establish, on
 21 their face, that the amount in controversy exceeds the jurisdictional requirement. *See, e.g.,*
 22 *Easterling v. SmithKline Beecham Corp.*, No. 2:05 CV 35 KS-KMR, 2006 WL 1581322 (S.D.
 23 Miss. 2006) (in pharmaceutical/personal injury case, where plaintiff alleged serious and permanent
 24 injuries, mental anguish, medical expenses, loss of earnings and future earnings, pain and
 25 suffering, and sued for compensatory and punitive damages, it was facially apparent from face of
 26 complaint that plaintiff’s damages allegations exceeded jurisdictional threshold of the court;
 27 motion for remand denied); *accord Randle v. SmithKline Beecham Corp.*, 338 F. Supp. 2d 704,

1 709-712 (S.D. Miss. 2004).

2 8. The face of the Complaint does not establish that Plaintiff seeks damages in excess
 3 of \$75,000. However, Plaintiff alleges that he was “impaled by a protruding piece of reinforcing
 4 bar and severely injured.” (Ex. 1, ¶ 3.22). Plaintiff further alleges that he “...has suffered severe
 5 and grievous bodily injury, permanent disability, bodily impairment, pain and suffering, past and
 6 future economic loss, and has incurred medical and other expenses and will continue to incur
 7 medical and related expenses and expenses from relying on the help and assistance from family
 8 members and friends to provide necessary services for various needs created by his injuries and
 9 medical conditions in the future.” (Ex. 1, ¶ 5.1).

10 9. On May 11, 2017 Plaintiff’s counsel sent defense counsel a copy of the State of
 11 Washington Department of Labor and Industries (“WDLI”) letter dated May 2, 2017, reflecting a
 12 lien for medical aid amounts and time-loss compensation purportedly spent on Plaintiff in the
 13 amount of **\$188,740.94.** (WDLI May 2, 2017 Letter – [Exhibit 4](#)).

14 10. Based on the nature of the damages alleged in the Complaint, which includes
 15 anticipated future economic loss and medical and other expenses, and the WDLW letter reflecting
 16 a current L&I lien of \$188,740.94, it is more likely than not the damages sought by Plaintiff
 17 arising from the incident described in Plaintiff’s First Amended Complaint for Personal Injuries
 18 and Damages is in excess of the \$75,000 threshold. *See Singer, Del Real, supra.*

19 **B. Diversity of Citizenship**

20 11. This is a personal injury action arising from alleged damages resulting from a
 21 workplace injury in Seattle, King County, Washington. *See generally* Ex. 1.

22 12. A party may allege diversity jurisdiction upon “information and belief” where the
 23 facts supporting jurisdiction are not “reasonably ascertainable,” and in “unusual circumstances,” a
 24 party need not affirmatively allege the citizenship of an opposing party.” *Carolina Cas. Ins. Co. v.*
 25 *Team Equip., Inc.*, 741 F.3d 1082, 1087 (9th Cir. 2014). Paragraph 1 of Plaintiff’s Complaint
 26 asserts that Plaintiff is a resident of Washington state. (Ex. 1, ¶ 1.1). “The determination of a
 27 litigant’s state citizenship for purposes of diversity jurisdiction is a matter of federal law...[and]

1 although it is settled that citizenship for purposes of 28 U.S.C. § 1332(a) means domicile rather
 2 than residence, considerations on which federal courts rely in determining domicile often derive
 3 from state choice-of-law rules that have been developed in such diverse contexts as probate
 4 jurisdiction, taxation of incomes or intangibles, or divorce law.” *Stifel v. Hopkins*, 477 F.2d 1116,
 5 1120 (6th Cir. Ohio 1973) (internal citations omitted). “To show state citizenship for diversity
 6 purposes under federal common law a party must (1) be a citizen of the United States, and (2) be
 7 domiciled in the state.” *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983)
 8 (internal citations omitted). In order to be “domiciled” within a particular state, a “person must be
 9 physically present in the state and must have either the intention to make his home there
 10 indefinitely or the absence of an intention to make his home elsewhere.” *Gilbert v. David*, 235
 11 U.S. 561, 569-70, 35 S. Ct. 164 (1915). Plaintiff identifies his place of residence for all times
 12 material to this action as Puyallup, Washington. (Ex. 1, ¶ 1.1). Upon information and belief,
 13 Defendant asserts Plaintiff is domiciled in Washington, and thus, is a citizen of the State of
 14 Washington.

15 13. Defendant is and was at all relevant times hereto a joint venture between Dragados
 16 USA, Inc. (“Dragados”) and Tutor Perini Corporation (“Tutor Perini”). (Ex. 1, ¶ 1.2). Dragados is
 17 a Delaware corporation and Tutor Perini is a Massachusetts corporation. *Id.*, ¶¶ 1.3, 1.4.
 18 Dragados’ corporate headquarters is located in New York, NY and Tutor Perini’s corporate office
 19 is located in Sylmar, CA. Harris Rebar Seattle, Inc., is a Delaware corporation, *id.*, ¶ 1.5. Upon
 20 information and belief, Harris Rebar’s administration office is located in Stoney Creek, Ontario,
 21 Canada.

22 14. The citizenship of a joint venture is determined by the citizenship of its individual
 23 partners/members. *Carson Constr. Co. v. Fuller-Webb Constr.*, 198 F. Supp. 464 (D. Mt. 1961).
 24 See also *Mackason v. Diamond Fin. LLC*, 347 F. Supp. 2d 53 (S.D.N.Y. 2004); *VMS/PCA Ltd.*
 25 *Partnership v. PCA Partners Ltd. Partnership*, 727 F. Supp. 1167 (N.D. Ill. 1989). “[D]iversity
 26 jurisdiction in a suit by or against [an artificial entity] depends on the citizenship of ‘all its
 27 members’...‘the several persons composing such association’ [or] ‘each of its members.’” *Carden*

1 *v. Arkoma Assocs.*, 494 U.S. 185, 195 (1989). Thus, for the purpose of removal based on diversity
 2 jurisdiction, Defendant STP is both a citizen of the State of Delaware (Dragados) and a citizen of
 3 the State of Massachusetts (Tutor Perini). 28 U.S.C. § 1332(C)(1); *Hertz Corp v. Friend*, 559 U.S.
 4 77, 92-93 (2010); *Carden, Carson Constr. Co., supra*.

5 15. Removal of this action on the basis of diversity of citizenship is proper under 28
 6 U.S.C. § 1332 because there is complete diversity between Plaintiff and all named defendants, and
 7 no defendant is a citizen of the forum State. *Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 84 (2005).

8 16. Pursuant to 28 U.S.C. § 1441(a), “any civil action brought in State court of which
 9 the district courts of the United States have original jurisdiction, may be removed by the defendant
 10 . . . to the district court of the United States for the district and division embracing the place where
 11 such action is pending.” This action was pending in Washington State Superior Court for King
 12 County. Accordingly, under 28 U.S.C. § 1441(a), removal is proper to the United States District
 13 Court for the Western District of Washington, Seattle Division, because this district and division
 14 embraces King County. *See LCR 3(e)*.

15 IV. REQUIRED DOCUMENTS

16 17. Defendant will promptly file a copy of this Notice with the Clerk of the King
 17 County Superior Court and will give written notice to all adverse parties. 28 U.S.C. § 1446(d).

18 18. In accordance with 28 U.S.C. § 1446 and LCR 101 (b)(1), attached are the
 19 following documents which have been served on Defendant: Plaintiff’s First Amended Complaint
 20 for Personal Injuries and Damages ([Exhibit 1](#)); Declaration of Service of Tutor Perini Corporation
 21 ([Exhibit 2](#)) and; Declaration of Service of Dragados USA, Inc. ([Exhibit 3](#)).

22 19. Within 14 days of this Notice, Defendant will file with the United States District
 23 Court for the Western District of Washington, Seattle Division, black-and-white copies of all
 24 additional records and proceedings in the State Court, together with counsel’s verification that
 25 these are true and complete copies of all records and proceedings. LCR 101(c).

26 20. As permitted by Fed. R. Civ. P. 38, Fed. R. Civ. P. 81(c)(3), and LCR 38(b) and
 27 101(e), Defendant will file a separate jury demand.

1 **V. CO-DEFENDANT'S CONSENT TO REMOVAL**

2 21. Pursuant to 28 U.S.C. § 1446(b)(2)(A), Defendant Harris Rebar Seattle, Inc.
3 consents to the removal of this action.

4

5 WHEREFORE, Defendant Seattle Tunnel Partners requests that the above-captioned
6 action, *Devin A. Whittier v. Seattle Tunnel Partners and Harris Rebar Seattle, Inc.*, Washington
7 State Superior Court for King County Case No. 17-2-04219-6 SEA, be removed to the United
8 States District Court for the Western District of Washington at Seattle.

9 DATED this 15th day of May, 2017.

10 LEWIS BRISBOIS BISGAARD & SMITH LLP

11 /s/ Michael A. Jaeger

12 /s/ Keith M. Hayasaka

13 Michael A. Jaeger, WSBA # 23166
14 Keith M. Hayasaka, WSBA # 51949
15 1111 Third Avenue, Suite 2700
16 Seattle, WA 98101
17 (206) 436-2026 / (206) 436-2030 Fax
18 E-mail: Michael.Jaeger@lewisbrisbois.com
19 Keith.Hayasaka@lewisbrisbois.com
20 Attorneys for Defendant STP .

DECLARATION OF SERVICE

The undersigned makes the following declaration certified to be true under penalty of perjury pursuant to RCW 9A.72.085:

I hereby certify that on May 15, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record.

On the date given below, I also caused to be sent out for service a true and correct copy of the foregoing on the following parties in the manner indicated:

<i>Plaintiff's Counsel</i> R. Randall Harrison, WSBA #16514 Torrone Law LLC 705 South 9 th Street, Suite 201 Tacoma, WA 98405	<input checked="" type="checkbox"/> via U.S. Mail, first class, postage prepaid <input type="checkbox"/> via UPS overnight service <input type="checkbox"/> via Legal Messenger Hand Delivery <input checked="" type="checkbox"/> via CM/ECF <input type="checkbox"/> via Facsimile <input type="checkbox"/> via E-mail
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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct

Executed this 15th day of May, 2017, at Seattle, Washington.

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: /s/ Silvia Webb
Silvia Webb, Legal Secretary
1111 Third Avenue, Suite 2700
Seattle, Washington 98101
(206) 436-2020
Silvia.Webb@lewisbrisbois.com

EXHIBIT 1

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

DEVIN A. WHITTIER, Individually,

Plaintiff,

v.

SEATTLE TUNNEL PARTNERS, a joint
venture; HARRIS REBAR SEATTLE, INC., a
Delaware corporation;

Defendants.

CAUSE NO. 17-2-04219-6 SEA

**FIRST AMENDED
COMPLAINT FOR PERSONAL
INJURIES AND DAMAGES**

COMES NOW the Plaintiff, DEVIN A. WHITTIER, individually, by and through his counsel of record, R. Randall Harrison and Christopher G. Torrone of TORRONE LAW OFFICE, LLC, and for his cause of action against the named defendants herein, alleges and states as follows:

I. PARTIES

1.1 That the Plaintiff, Devin A. Whittier, was at all times material herein not married and an individual resident of Puyallup, Pierce County, State of Washington.

AMENDED COMPLAINT FOR DAMAGES - 1

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Tacoma, WA 98405
(253) 327-1280

1 1.2 Defendant Seattle Tunnel Partners ("STP") is a joint venture of
2 Dragados USA, Inc., and Tutor Perini Corporation, and was contracted to construct the
3 Seattle Tunnel Project for the Washington State Department of Transportation.

4 1.3 Dragados USA, Inc., is a Delaware corporation, is registered to do business
5 in the State of Washington, and at all times material hereto was doing business in King
6 County, Washington in joint venture with Tutor Perini Corporation.

7 1.4 Tutor Perini Corporation, is a Massachusetts corporation, registered to do
8 business in the State of Washington, and at all material times hereto was doing business
9 in King County, Washington in joint venture with Dragados USA, Inc.

10 1.5 Harris Rebar Seattle, Inc., is a Delaware Corporation, registered to do
11 business in the State of Washington, and at all times material hereto was doing business
12 in King County, Washington as a subcontractor on the Seattle Tunnel Project.

13 II. JURISDICTION AND VENUE

14 2.1 This court has subject matter jurisdiction under RCW 2.08.010.

15 2.2 This court has personal jurisdiction over STP under RCW 4.28.185
16 because STP does business and owns property in Washington.

17 2.3 This court has personal jurisdiction over Harris Rebar Seattle, Inc., under
18 RCW 4.28.185 because Harris Rebar Seattle, Inc. does business and owns property in
19 Washington.

20 2.4 Venue is proper in King County under RCW 4.12.025(1) because STP and
21 Harris Rebar were doing business in King County, Washington.

JIL FACTS

3.1 Defendant STP was the general contractor on the SR 99 Bored Tunnel Alternative Design Build Project.

3.2 On December 10, 2010 the General Contractor, through their authorized agents, James Frost, Tutor Perini Corporation and Fernando Gonzales Alcañiz, Dragados U.S.A., Inc., members of joint venture Defendant STP entered into a Design-Build Contract (the "Contract") with the Washington State Department of Transportation ("WSDOT") in which STP agreed to perform certain design, engineering and construction services for the SR 99 Bored Tunnel Alternative Design-Build Project on the Alaskan Way Viaduct in Seattle, King County, Washington (the "Project").

3.3 The December 10, 2010 Contract required STP to adhere to certain performance standards including providing a project manager who would be present or have an approved designee present at the project site at all times during construction while work was being performed. The Contract also provided for STP to comply with all laws and to supervise and be solely responsible for and have control over the construction means, methods, techniques, sequences, procedures and site safety.

3.4 The December 10, 2010 Contract required STP to be solely responsible for coordinating all portions of the work at the project site.

3.5 Defendant STP's contract required and obligated it to take all reasonable precautions and have the duty and responsibility for safety on the Project worksite.

1 3.6 Defendant STP also contracted to comply with an apprentice utilization
2 requirement pursuant to a State-approved apprentice training program provided by the
3 Department of Labor and Industries.

4 3.7 Defendant General Contractor STP entered into a Subcontract with Harris
5 Rebar Seattle, Inc., through their authorized agent, Lyall Hadden, on February 1, 2012.
6 The scope of subcontractor Harris Rebar's work was providing reinforcing steel at the SR
7 99 Project. Harris Rebar's portion of the Project consisted of installation of reinforcing
8 steel in pile caps, cont. footings, slab on grade, elevated two way slab, slab on metal deck,
9 tunnel, grade beams, deck beams, column dowels, typical columns, CIP walls, wall
10 dowels, site work, curbs, elevator pit and stair footing.

11 3.8 Defendant STP also entered into a second subcontract with Harris Rebar
12 Inc., through its authorized agent, Mark Pequegnat, on July 15, 2013. The scope of this
13 subcontract was to fabricate and install the reinforcing steel for the North and South
14 Operations buildings and Mitigation buildings for the SR 99 Project. Defendant Harris
15 Rebar was to furnish and install to the satisfaction of the Contractor, all labor, equipment,
16 materials, supplies, services, cost of all applicable sales or use taxes, fees, permits, etc.
17 including but not limited to the following items of work: reinforcing steel and supports
18 for the North Operations, South Operations and Mitigation buildings.

19 3.9 Defendant Harris Rebar Seattle, Inc., subcontracted with its wholly owned
20 subsidiary, Central Steel, Inc., to provide labor for the fulfillment of its contractual
21 obligations to the Project.

1
2 3.10 Central Steel, Inc. employed Plaintiff Devin A. Whittier as an ironworker.

3
4 3.11 Defendant Harris Rebar Seattle, Inc.'s responsibilities as subcontractor
5 were to provide a Project Superintendent to oversee the Project Safety Program and to
6 ensure that all inspections, reporting and records required by the Site Specific Safety Plan
7 and the Company Injury and Illness Prevention Program were being completed and
8 submitted.

9
10 3.12 Defendant Harris Rebar Seattle, Inc.'s responsibilities as subcontractor
11 were to provide a Project Foreman to implement and enforce the Site Specific Safety Plan
12 and the Company Injury and Illness Prevention Program and to conduct continual
13 observational safety checks and assess the safety of the operations assigned and to see
14 that any unsafe acts or conditions were corrected as required and to immediately report all
15 accidents, injuries and near miss incidents to the General Contractor.

16
17 3.13 Defendant Harris Rebar's responsibilities as subcontractor was to provide
18 employees who were adequately trained and supervised to understand and adhere to the
19 policies and procedures of the Site Plan and to federal, state, local and project regulations.

20
21 3.14 Defendant Harris Rebar's Project General Foreman was responsible for
22 conducting visual inspections and for reporting of any unsafe acts or condition on the
23 jobsite to the Project Superintendent for immediate correction; and the Project
24 Superintendent was responsible for documenting any unsafe conditions and corrections at
25 the jobsite in his/her daily report.

1 3.15 Defendant Harris Rebar's Safety Coordinator and Field Safety Officer
2 were responsible for conducting periodic site safety assessments and for submitting
3 written reports to the Safety Officer.

4 3.16 Defendant Harris Rebar's Branch Manager Safety Officers were
5 responsible for the Safety Program's effectiveness. It was the responsibility of the Harris
6 Rebar Safety Officer to identify and communicate any hazards and corrections of unsafe
7 conditions at the Project site.

8 3.17 Defendant Harris Rebar's Field Superintendent was responsible for the
9 monitoring of the Project site for hazards or unsafe working conditions through personal
10 observations and to keep a written record of the inspections and to participate in site
11 inspections with the appointed safety officials and to implement corrective measures as
12 required to ensure safety at the Project site.

13 3.18 STP and Harris Rebar were responsible for general construction services
14 to the Project including insuring that all protruding pieces of reinforcing rebar were
15 significantly protected with sufficient means to prevent the impalement of workers
16 installing rebar directly above the exposed rebar.

17 3.20 On February 12, 2015, Plaintiff Devin A. Whittier was an apprentice
18 ironworker for employer Central Steel, Inc., and was performing construction work on the
19 Project.

20 3.21 On February 12, 2015, Plaintiff Whittier along with other crew members
21 were working at the construction site in the elevator pit when the rebar wall that they
22 were working on collapsed.

were constructing detached from the forms and fell away with the employees attached to
the rebar wall.

3.22 Plaintiff Whittier was impaled by a protruding piece of reinforcing bar and
severely injured. The protruding piece of rebar was insufficiently protected with
sufficient means to prevent the impalement.

IV. CAUSES OF ACTION-TORTIOUS CONDUCT

4.1 The Defendant STP, as the General Contractor, had a common law non-delegable legal duty to the Plaintiff as an employee of a subcontractor, Central Steel, Inc. to provide a safe place of work. The Defendant breached that duty. This breach proximately caused injury and damage to the Plaintiff.

4.2 The Defendant Harris Rebar negligently failed to provide the Plaintiff with a safe place to work at the Project site; this failure proximately caused injury and damage to the Plaintiff.

4.3 The Defendants STP and Harris Rebar failed to follow and comply with applicable OSHA, WISHA and various other regulations, including but not limited to administrative, technical and safety regulations at the Project site; and were in violation of WAC 296-155-680(7)(a) and WAC 296-155-680(7)(c) and these failures proximately caused injury and damage to the Plaintiff.

4.4 The Defendants STP and Harris Rebar negligently failed to provide adequate safety training of the employees and subcontractors; these failures proximately caused injury and damage to the Plaintiff.

AMENDED COMPLAINT FOR DAMAGES - 7

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4.5 The Defendants STP and Harris Rebar negligently failed to provide adequate supervision of subcontractors and employees on the Project and this failure proximately caused injury and damage to the Plaintiff.

4.6 The Defendants STP and Harris Rebar negligently failed to properly institute and supervise safety procedures and practices of its employees and subcontractors on the Project; these failures proximately caused injury and damage to the Plaintiff.

4.7 There are no other entities liable or responsible for the injuries and damages suffered by Plaintiff.

4.8 Plaintiff Devin A. Whittier did not breach any duty to himself and was not negligent in this matter.

V. DAMAGES

5.1 Plaintiff Devin A. Whittier as a direct and proximate result of the negligent acts and/or omissions of the Defendants STP and Harris Rebar, has suffered severe and grievous bodily injury, permanent disability, bodily impairment, pain and suffering, past and future economic loss, and has incurred medical and other expenses and will continue to incur medical and related expenses and expenses from relying on the help and assistance from family members and friends to provide necessary services for various needs created by his injuries and medical conditions in the future. Plaintiff Devin A.

Whittier as a further proximate result will continue to experience pain and suffering, both mental and physical, disability, disfigurement, and loss of enjoyment of life. Additionally, Plaintiff Devin A. Whittier has suffered other special and general damages that shall be proven at the time of trial.

VI. LIMITED PHYSICIAN-PATIENT PRIVILEGE WAIVER

6.1 Plaintiff Devin A. Whittier, pursuant to RCW 5.60.060, as amended by the laws of 1986, hereby grant limited waiver of the physician-patient privilege. The scope of this waiver is as follows:

- A. This waiver shall take effect regarding this lawsuit for personal injuries on the 89th day from the date the action was filed;
- B. This waiver shall be subject to such limitations as the Court may impose. The waiver shall at all times be limited by an order entered in connection therewith by the King County Superior Court; and
- C. This waiver shall only apply to the privilege which exists under RCW 5.60.060 and shall not be deemed to be broader in its scope nor apply to physician-patient privileges nor governed by RCW 5.60.060. Constitutional rights of privacy, impairment or interference with the doctor/patient relationship, and other rights not governed by RCW 5.60.060 regarding physician-patient relationships are not waived. This waiver is made solely to comply with the legal obligation required by the 1986 amendment to RCW 5.60.060 requiring such waiver within 90 days of the filing of an action for personal injuries.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against the named Defendants herein, jointly and severally, as follows:

1. For general damages in an amount sufficient to fully compensate the Plaintiff for his injuries and loss in an amount to be proven at trial;

1 2. For such special damages as Plaintiff is able to prove at the time of trial,
2 including but not limited to lost wages, loss of earning capacity and medical expenses and
3 prejudgment interest on any special damages which will be proven at trial;
4 3. For Plaintiff's costs and disbursements herein, to be taxed according to law;
5 4. For such other and further relief as the Court may deem just and equitable in
6 the circumstances.

7

8

9 **VIII. JURY DEMAND**

10 Plaintiff hereby requests that this matter be tried by a jury of twelve (12) persons.

11 DATED April 3, 2017.

12 TORRONE LAW OFFICES, LLC

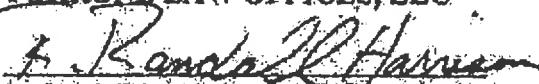
13 
14 R. Randall Harrison, WSBA No. 16514
15 Attorney for Plaintiff

EXHIBIT 2

**IN THE SUPERIOR COURT FOR STATE OF WASHINGTON
IN AND FOR KING COUNTY**

DEVIN A. WHITTIER, Individually,

Plaintiff,

CAUSE NO. 17-2-04219-6 SEA

SEATTLE TUNNEL PARTNERS, a joint venture; HARRIS REBAR SEATTLE, INC., a Delaware corporation,

**DECLARATION OF SERVICE
OF TUTOR PERINI CORPORATION**

Defendants.

I Declare:

I am over the age of 18 years, and I am not a party to this action.
I PERSONALLY SERVED **TUTOR PERINI CORPORATION** via the Registered Agent - CT Corporation System, 505 Union Ave. SE, Ste 120, Olympia, WA 98501 the following documents:

1. Amended Complaint for Damages;
2. Amended Summons;
3. Civil Order Setting Case Schedule;
4. Case Cover Sheet

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED THIS 14 DAY OF APRIL, 2017.

~~JAMES KAYLOR~~
West Coast Investigations

**DECLARATION OF SERVICE -
TUTOR PERINI CORP.** - Page 1 of 1

Torrone Law LLC
705 South 9th Street, Suite 201
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EXHIBIT 3

1
2
3
IN THE SUPERIOR COURT FOR STATE OF WASHINGTON
IN AND FOR KING COUNTY

4 DEVIN A. WHITTIER, Individually,

5 Plaintiff,

6 CAUSE NO. 17-2-04219-6 SEA

7 v.

8 DECLARATION OF SERVICE
9 OF DRAGADOS USA, INC.

10 SEATTLE TUNNEL PARTNERS, a joint
11 venture; HARRIS REBAR SEATTLE, INC.,
a Delaware corporation,

12 Defendants.

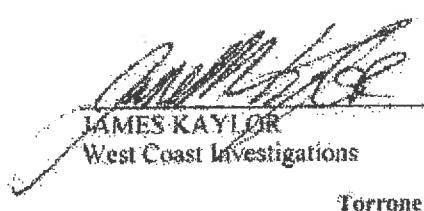
13 *I Declare:*

14 1. I am over the age of 18 years, and I am not a party to this action.
15 2. I PERSONALLY SERVED DRAGADOS USA, INC. via the Registered Agent –
16 Corporation Service Company, 300 Deschutes Way SW, Ste 304, Tumwater, WA
98501 the following documents:

17 1. Amended Complaint for Damages;
18 2. Amended Summons;
19 3. Civil Order Setting Case Schedule;
4. Case Cover Sheet

20 I declare under penalty of perjury under the laws of the state of Washington that the
21 foregoing is true and correct.

22 DATED THIS 14 DAY OF APRIL, 2017.

23
24
25
26 
JAMES KAYLOR
West Coast Investigations

DECLARATION OF SERVICE –
DRAGADOS USA, INC. - Page 1 of 1

Torrone Law LLC
705 South 9th Street, Suite 201
Tacoma, WA 98405
(253) 327-1280

EXHIBIT 4



STATE OF WASHINGTON

DEPARTMENT OF LABOR AND INDUSTRIESTHIRD PARTY SECTION PO BOX 44288
OLYMPIA WASHINGTON 98504-4288

May 02, 2017

CLAIM ID: AU00116 UNIT: 6
INJURY DATE: 02/12/15

R RANDALL HARRISON
 TORRONE LAW, LLC
 705 S. 9TH ST, STE 201
 TACOMA WA 98405

To Whom It May Concern:

To date, the Department of Labor and Industries has spent \$188,740.94 ON DEVIN ANTONIO WHITTIER.

Medical Aid Paid.....\$ 102,170.19
 Accident Fund Paid:

Time-Loss Compensation.....	\$ 86,570.75
Permanent Partial Disability.....	0.00
PPD Interest.....	0.00
Miscellaneous	0.00

These amounts, showing our current expenditures, must be paid back when a settlement is received. These costs will increase if we make additional payments.

We suggest that before you make a decision on any settlement in the third party action, you send a copy of the offer to us. We will review the offer to make sure it is sufficient to cover the costs that have been, or will be, paid on the claim.

We also remind you that without our written approval, a settlement that doesn't cover past and future industrial insurance costs is invalid.

Please keep us informed on the progress of your case. If you have filed a lawsuit, please send us a copy for our records. If not, please advise us if you prefer Labor and Industries to consider taking third party action.

We look forward to hearing from you.

Sincerely,

SARAH E JACKSON
 (360) 902-5102